



UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES
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MAILED

JUL 18 2006

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Applicants: Diab et al.
Application No.: 09/111,604
Filed: 07/07/98
For: Signal Processing Apparatus

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,477.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

/ss/ Jameson Lee
JAMESON LEE
Administrative Patent Judge

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Filed:
July 18, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

THOMAS J. YORKEY
Junior Party
(Patent 5,645,060),

v.

MOHAMED K. DIAB, ESMAIEL KIANI-AZRBAY JANY
and WALTER M. WEBER
Senior Party
(Application 09/111,604).

Patent Interference No. 105,477
(Technology Center 3700)

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DECLARATION - Bd.R. 203(d)¹

**PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES**

1 **Part A. Declaration of interference**
2 An interference is declared (35 U.S.C. § 135(a)) between the above-identified
3 parties. Details of the application(s), patent (if any), reissue application (if any),
4 count(s) and claims designated as corresponding or as not corresponding to the
5 count(s) appear in Parts E and F of this DECLARATION.

6

¹ "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

1 **Part B. Judge managing the interference**

2 Administrative Patent Judge Jameson Lee has been designated to manage the
3 interference. Bd. R. 104(a).

4 **Part C. Standing order**

5 A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this
6 DECLARATION. The STANDING ORDER applies to this interference.

7 **Part D. Initial conference call**

8 A telephone conference call to discuss the interference is set for **1:00 p.m. on**
9 **September 12, 2006** (the Board will initiate the call).

10 No later than **four business days** prior to the conference call, each party shall
11 file and serve (SO ¶¶ 10.1 & 105) a list of the motions (Bd. R. 120; Bd. R. 204;
12 SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

13 A sample schedule for taking action during the motion phase appears as Form 2
14 in the STANDING ORDER. Counsel are encouraged to discuss the schedule prior to
15 the conference call and to agree on dates for taking action. A typical motion period
16 lasts approximately eight (8) months. Counsel should be prepared to justify any
17 request for a shorter or longer period.

Part E. Identification and order of the parties

Junior Party

Named inventors: Thomas J. Yorkey, San Ramon, CA

Involved Patent: 5,645,060, granted July 8, 1997
based on application 08/490,315, filed
June 14, 1995

Title: Method and apparatus for removing artifact and
Noise from pulse oximetry

Assignee: Nellcor Puritan Bennett Incorporated

Senior Party

Named Inventors: Mohamed K. Diab, Laguna Niguel, CA
Esmaiel Kiani-Azarbay Jany, Laguna Niguel, CA
Walter M. Weber, Los Angeles, CA

Involved Application: 09/111,604, filed July 7, 1998

Title: Signal processing apparatus

Assignee: Comerica Bank-California

The senior party is assigned exhibit numbers 1001-1999. The junior party is
assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1); SO ¶ 154.2.1. The senior party
is responsible for initiating settlement discussions. SO ¶ 126.1.

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Claim 6 of Yorkey's Patent 5,645,060
or
Claim 39 of Diab's Application 09/111,604

Yorkey: 1-17

The claims of the parties which correspond to Count 1 are:

Diab: 39

Yorkey: 1-5, 7, 8 and 10-17

Diab: None

Yorkey: None

Diab: Application 08/943,511, filed October 6, 1997
Application 08/572,488, filed December 14, 1995
Application 08/132,812, filed October 6, 1993

Part G. Heading to be used on papers

The following heading must be used on all papers filed in this interference, see

SO ¶ 106.1.1:

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THOMAS J. YORKEY

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(Patent 5,645,060),

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Part H. Order form for requesting file copies

When requesting copies of files, use of SO Form 4 will greatly expedite processing of the request. Please attach a copy of Parts E and F of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

/ss/Jameson Lee
Administrative Patent Judge

Enc:

Copy of STANDING ORDER
Copy U.S. Patent 5,645,060
Copy of claims of Application 09/111,604

Revised 3 January 2006

cc (via overnight delivery):

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